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In the Supreme Court of the United States

OCTOBER TERM, 1975

IN THE MATTER OF

SAMUEL V. BOSSOV,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner, Samuel V. Bossov, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois which suspended him from the practice of law for three (3) years.

OPINION BELOW

The judgment of the Supreme Court of Illinois, two justices dissenting, was entered March 24, 1975. The unreported opinion is reprinted at Appendix A. Petition for Rehearing was denied May 29, 1975. A copy of the order denying rehearing is reprinted at Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the suspension of an attorney in a state court disciplinary proceeding on stale charges, based on events of 14 to 17 years ago, is commensurate with the "due process," "speedy trial" and "cruel and unusual punishment" provisions of the United States Constitution as applied to the states through the Fourteenth Amendment.

2. Whether the state court violated the constitutional standard of due process when it shifted the burden of proof on essential elements of the charges against the Petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

United States Constitution, Amendment VIII:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

United States Constitution, Amendment XIV, Section 1:

> "All persons born or naturalized in the United States are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This was a disciplinary proceeding instituted on February 5, 1965, against a duly licensed attorney at law, Samuel V. Bossov.

A 16 count complaint was lodged against Mr. Bossov (the instant Petitioner) by the Board of Managers of The Chicago Bar Association, sitting as commissioners of the Supreme Court of Illinois. The complaint alleged that between May, 1957 and February, 1961, Petitioner had unlawfully solicited and procured personal injury cases and failed to account to clients for monies received on their behalf.

The charges against Petitioner were the outgrowth of an investigation by the American Insurance Association, whose employees and agents posed as representatives of The Chicago Bar Association. As the dissenting opinion below notes, the investigation lasted several months and witnesses were "ferreted out" by a "multitude of insurance investigators." None of Petitioner's clients were

among the "complainants" in the 16 charges filed against him.[1]

Of the original 16 count complaint, seven entire counts were abandoned. Solicitation charges in five of the nine remaining counts were retained; "failure properly to account" was charged in 14 of the original 16 counts of which five were retained; and the charge of "failure to consult with clients on settlements" was retained in three counts. In the counts which survived dismissal, unprofessional conduct was charged in eight accident cases—the most recent of which occurred on February 10, 1961, and the oldest of which happened on July 12, 1958.

The Bar Association's complaint was served upon the attorney on February 5, 1965—four years after the most recent accident, four years and eight months after the most recent allegation of failure to account, and three

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[1] In 1965 the standard procedure in initiating and conducting an investigation of an attorney for disciplinary purposes was by an inquiry or grievance committee of The Chicago Bar Association, or the Illinois State Bar Association. If the evidence heard by these committees warranted discipline, a formal complaint was made against the attorney, hearings thereon were held by the Bar Association committees involved and recommendations made by the governing officials of the Bar Association to the Supreme Court of Illinois for appropriate discipline. In 1973 this procedure was changed by a rule of the Supreme Court establishing the Attorney Registration and Disciplinary Commission, a full-time body with subpoena power, to conduct its own investigations of complaints against attorneys and to recommend appropriate discipline to the Supreme Court. Ill.Rev.Stat. ch. 110A, §§ 751-756 (1973); see, Murphy, *Disciplinary Procedures*, 60 Ill. Bar J. 528 (1972). The instant procedure of commencing and processing a complaint against Petitioner by agents and employees of a self-interested body such as the American Insurance Association was most unusual.

years and five months after the Insurance Association investigation was completed. Proofs were closed November 12, 1970.

Without explanation, the hearing panel of the Chicago Bar Association delayed for over two years and seven months before issuing a report on June 14, 1973, recommending disbarment of Petitioner. This recommendation was not adopted and on January 7, 1974, the Board of Managers filed a report with the Illinois Supreme Court recommending suspension for three years. Four justices of the Supreme Court of Illinois accepted the sanction recommended by the Board of Managers and entered judgment accordingly. Two justices dissented on the ground, in part, that the punishment was excessive in the circumstances.

In the interval between February 10, 1961, the date of the last alleged misconduct of the Petitioner, to the present, no fresh charges were made against him and he continued to practice law in a responsible and proper professional manner.

Petitioner specifically raised the constitutional issues underlying this Petition for Writ of Certiorari before the Illinois Supreme Court. Petitioner asserted that unreasonable delays in the disciplinary proceedings violated his constitutional right to due process of law. (Brief of Respondent at 6-7, 47-57; Petition for Rehearing, 13-15, 18-25).

The Illinois Supreme Court "deplored" these delays and commented there was "no explanation" for the delay of over two years between the completion of hearings and the filing of the report. Nevertheless the majority held

that ". . . on this record they do not constitute a sufficient ground for the dismissal of the complaint." (App. A at 8).

Despite Petitioner's allegations of specific prejudice caused by delay and the demonstrated inability of witnesses to remember the events, the court found that there was "no charge of specific prejudice made" and that the record indicated "no prejudice" resulted from the delays. (App. A at 9).

Likewise, the majority rejected Petitioner's assertion that the charges had not been established by clear and convincing evidence on a record free from doubt. (App. A. at 2).

REASONS FOR GRANTING WRIT

It is respectfully submitted that the instant record presents serious constitutional violations worthy of this Court's review as follows:

(1) The long delay in filing charges and the additional delay in imposing sanctions violated Petitioner's right to due process.

(2) The punishment was "cruel and unusual."

(3) The court below failed to meet due process standards of proof in determining Petitioner's guilt.

I.

PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS WAS ABRIDGED BY THE INSTANT DISCIPLINARY PROCEEDING.

A disciplinary proceeding against an attorney is quasi-criminal in nature and the basic constitutional requirements of due process apply. *In re Ruffalo,* 390 U.S. 544, 551 (1968); *Spevack* v. *Klein,* 385 U.S. 511 (1967).

A. The Delays In Processing Stale Charges Were Prejudicial And Unjust To Petitioner.

The delays of the Chicago Bar Association in initiating the action and in rendering its report and recommendation of punishment are without explanation or justification. Although Illinois law specifies no statute of limitations for disciplinary proceedings, most jurisdictions consider lengthy delays as cause for dismissal of charges. See *Tennessee Bar Association* v. *Berke,* 344 S.W.2d 567 (C.A. Tenn. 1960); *Florida Bar Association* v. *Randolph,* 238 So.2d 635, 639 (Fla. 1970). It is also the law of Illinois.

People v. *Allison*, 68 Ill. 151 (1873); *People* v. *Hooper*, 218 Ill. 313, 75 N.E. 896 (1905).

In the *Tennessee* case, the court remarked in language pertinent to the instant case:

> "The gravity of the charges demanded that they be examined fully at the first opportunity. That this was not done does not appear to be the fault of Berke. . . . Moreover, it appears that in the nine-year period, Berke has not transgressed against the ethics or morals of the legal profession, but to the contrary, sustained a good reputation as a lawyer." 344 S.W.2d at 572.

In the *Florida* case the court remarked:

> "The responsibility for exercising diligence in the prosecution rests with the Bar. When it fails in this regard, the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline. This is so, even though the record shows that the conduct of the lawyer merits discipline." 238 So.2d at 639.

The majority of the Illinois Supreme Court unrealistically and inaccurately suggests that no prejudice was shown as a result of the delay in the proceedings against Petitioner. (App. A at 9). The record, however, is replete with instances where Petitioner was prejudiced in his defense by the confused and uncertain testimony of witnesses who freely admitted to greatly diminished powers of recollection. The Bar Association's unreasonable delay in filing charges after completion of a full investigation was in large part responsible for the losses of recollection.

Petitioner was particularly prejudiced by this delay in defending allegations that he solicited personal injury claims. In four instances, the witnesses testified that un-

identified persons recommended Petitioner as their attorney. But the complaint against Petitioner alleged that he ". . . retained and employed various persons to solicit and/or procure, *for consideration*, personal injury claims." (Emphasis added). The witnesses were unable to identify any so-called procurers.[2] Where a principal party to the event in question cannot be located because of delay, the defense has been substantially prejudiced. *United States* v. *Curry*, 284 F.Supp. 458 (N.D. Ill. 1968). These understandable losses of memory, caused by delays from five to nine years between the alleged event and the time of testimony, prejudiced the Petitioner in refuting the allegations against him. For example, Petitioner was unable to establish by independent testimony the negative fact, consistent with his own testimony, that he never paid anyone to solicit personal injury claims.

One witness described the effect of the delays on his ability to testify as follows:

> "After seven years I couldn't tell you much of anything." (R. 1163).

The Illinois Supreme Court conceded that most of the evidence concerning solicitation was circumstantial. (App. A at 4). The only evidence of solicitation that was not circumstantial involved a lady of advanced years who testified nine years after the event that Petitioner personally solicited her son's injury claim. In the interim, she had suffered a stroke and admitted that her mind was "not as great as it was." (R. 1065). Her physical description

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[2] One witness, testifying 7 years after the event, claimed that one of Petitioner's lawyers in this case and an investigator solicited his case in Chicago in 1960. It was stipulated that the lawyer was then a student in Cambridge, Massachusetts, and the investigator testified he first met the witness in 1965 in the course of preparing for Petitioner's disciplinary hearing.

of Petitioner was completely inaccurate (R. 1110) and she testified that the man who approached her on a Saturday in the summer of 1958 wore a hat. (R. 1067). Petitioner's habit was to play golf every summer weekend and never (except on one occasion when he lost a bet) to wear a hat. (R. 1969-70).

Contrary to the majority's assertion that "[t]here is no prejudice to the respondent shown by the record [of delay] here . . ." (App. A at 9), the record clearly shows prejudice in that Petitioner was unable to examine the alleged "procurers" in order to refute the inference that four isolated recommendations of his services ". . . show[ed] a pattern of comprehensive solicitation and procurement . . . ." (App. A at 2). Procedural due process required nothing less than prompt and fair notice of the charges in this disbarment proceeding. See, *In re Ruffalo,* 390 U.S. 544, 551, n.4 (1968).

B. The Sanction Imposed On The Petitioner Is "Cruel And Unusual" In The Circumstances Of The Instant Record.

A punishment which is "greatly disproportionate to the offense charged" is repugnant to the Eighth Amendment, *Weems* v. *United States,* 217 U.S. 349, 371, 382 (1910), the substance of which is now firmly embodied in the Fourteenth Amendment. *Robinson* v. *California,* 370 U.S. 660 (1962).

The discipline of an attorney whether by disbarment or prolonged suspension ". . . is the destruction [of the attorney's] professional life, his character and his livelihood. A removal of an attorney from practice for a period of years entails the complete loss of clientele with its consequent uphill road of patient waiting once again to estab-

lish himself in the eyes of the public, and the good graces of the courts and his fellow lawyers. In the meantime, his income and livelihood have ceased to exist." *In re Donaghy,* 402 Ill. 120, 83 N.E.2d 560, 562 (1948). While a punishment as severe as a three-year suspension may have been suitable at the time of the infractions, the intervening fourteen-year period has seen the marriage of the Petitioner, the raising of three children, and the conduct of a respectable law practice, unmarred by even a suggestion of impropriety.

Moreover, this Court has recognized that inordinate delay—

> "May 'seriously interfere with defendant's liberty, whether he is free on bail or not, and . . . may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.' " *Moore* v. *Arizona,* 414 U.S. 25, 27 (1973).

In light of the punishment that Petitioner has been suffering for the last decade and his exemplary record for the last fourteen years, a three-year suspension is indeed "greatly disproportionate to the offense(s) charged."

As this Court has said:

> "To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." *Robinson* v. *California,* 370 U.S. 660, 667 (1962).

The dissenting opinion of the Illinois Supreme Court is absolutely correct in asserting that, even accepting the majority's view of the evidence, the punishment of three years' suspension is harsh and excessive.

II.

PETITIONER'S RIGHT TO DUE PROCESS OF LAW WAS VIOLATED BY THE FAILURE OF THE ILLINOIS SUPREME COURT TO APPLY THE REQUIRED STANDARD OF PROOF.

Due process at the bare minimum requires that an accused can only be found guilty of the charges set out in the complaint. The Petitioner was charged, in part, with soliciting clients through paid agents. A failure to allege that the agents were hired by Petitioner would have been fatally defective under settled Illinois law. *In re Donaghy*, 402 Ill. 120, 83 N.E.2d 560 (1948).

The only evidence offered to support this charge consisted of testimony by former clients that certain unidentified individuals had recommended Petitioner as a lawyer. There was no evidence to support the essential allegation that the solicitors were paid for their efforts. The Illinois Court, however, held that such payments would be presumed from the evidence that unidentified individuals had recommended Petitioner. The court stressed that the Petitioner had failed to prove the absence of payment.[3]

Petitioner was thus charged with misconduct consisting of two elements—solicitation and payment. After the evidence had been gathered and the hearings closed, however, he was informed that the Complainant need only show

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[3] In its decision the Illinois Supreme Court stated:

"We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing." (App. A at 3-4).

solicitation. Petitioner must then disprove the second element, even though no evidence of its existence had been introduced and despite the fact that the alleged solicitors were never identified.

Such changes in the rules in the late stages of a disciplinary proceeding offend due process by denying Petitioner fair notice of the burden being imposed upon him. In *In re Ruffalo*, 390 U.S. 544 (1968), an attorney was charged with hiring a specified individual to solicit clients. In the middle of the hearings, the attorney's evidence demonstrated that this individual was hired as an investigator and not a solicitor. The charges were then amended to allege that the investigator was hired to investigate his own employer. This Court held that such procedure violated the attorney's due process rights. The fact that the attorney was given an opportunity to present evidence on the amended charges did not cure the constitutional defect since the attorney's actions during the earlier stage of the hearings were prejudiced by the amendment. The present case presents similar, although more egregious, constitutional violations. The charges against Petitioner were effectively amended to dispense with the allegation of payment only after the hearings had been completed. Unlike the attorney in *Ruffalo*, Petitioner had no opportunity to present further evidence when he discovered that the burden of proving the absence of payment had been placed upon him.

As noted above, Illinois law requires proof of attorney misconduct by clear and convincing evidence on a record free from doubt. *In re Moore*, 8 Ill.2d 373, 134 N.E.2d 324, 327 (1956). The Illinois court failed to apply this standard and shifted the burden of proof on an essential element of the charges. Relaxation of the customary standard of proof in such proceedings violates the due process clause.

In re Winship, 397 U.S. 358 (1970). See also, *Mullaney* v. *Wilbur*, 95 S.Ct. 1881 (1975); *Cool* v. *United States*, 409 U.S. 100 (1972).[4]

CONCLUSION

For these reasons Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois.

Respectfully submitted,

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[4] Disciplinary actions against attornies are for due process purposes, equivalent to juvenile proceedings. See *In re Ruffalo*, 390 U.S. 544, 551 (1968). This Court held in *Winship* that a shift in the standards of proof in juvenile proceedings violates due process requirements.

APPENDIX

APPENDIX A

Docket No. 46403—Agenda 59—September, 1974.

In re SAMUEL V. BOSSOV, an Attorney, Respondent

MR. JUSTICE WARD delivered the opinion of the court:

A division of the Committee on Grievances of the Chicago Bar Association sitting as commissioners of this court under our former Rule 751 recommended that Samuel V. Bossov, the respondent, be discharged from the practice of law. The complaint against the respondent, which had been filed by the Committee on Inquiry of the Chicago Bar Association, had charged him with soliciting personal injury claims, failing to account properly and pay over amounts due clients on settlements reached and with settling cases without having consulted with the clients. When the proceeding was referred to the full Committee on Grievances, that committee recommended that the sanction against the respondent be changed to suspension from practice for a period of five years. The Board of Managers of the Association then considered the record in the proceeding and has recommended to this court that the respondent be suspended for three years.

Bossov contends before us that the findings in the disciplinary proceeding were not sufficiently proved; that the participation of agents of the American Insurance Association in the investigation requires that the complaint against him be dismissed; and also that because of the unreasonable delay in the proceeding the complaint should be dismissed.

In a disciplinary proceeding the charges must be proved by clear and convincing evidence (*In re Moore*, 8 Ill.2d 373, 379) and findings made in the proceeding are entitled

to virtually the same weight as the findings of any initial trier of facts in our judicial system (*In re Broverman*, 40 Ill.2d 302, 306). The credibility of witnesses is a question for the commissioners who hear and observe the witnesses. *In re Lingle*, 27 Ill.2d 459, 467.

We cannot accept the contention that the findings of improper conduct made in the disciplinary proceedings were not supported by clear and convincing evidence.

As to the charges that the respondent solicited personal injury claims, the Committee on Grievances stated that "the charges of solicitation and procurement in Counts iV, VII, VIII, IX and X and the evidence produced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent."

The evidence to support the charges in count IV showed the client had been released from the hospital at about 5:00 or 5:30 p.m. following an accident which had occurred between 3 and 4 o'clock in the afternoon. That evening someone phoned the client's home and later a man came to her house and left the respondent's professional card. Regarding count VII, the client testified that the respondent approached her and her son when they were leaving the hospital and asked if he could represent them in their claims. She had never heard of respondent. That evening the respondent and another man appeared at her home and asked to represent her and her son in their claims.

The client concerned in count VIII of the complaint testified that following an automobile accident in which he was involved the investigating police officer suggested that he would be able to get a "newer car" if he employed the respondent. That evening, the client testified, representa-

tives of the respondent called on him and left the respondent's card. He also testified that the respondent referred him to a physician and advised him to tell the physician that he had been injured.

The client referred to in count IX testified that in the evening following an accident in which he was involved an unknown man came to him and recommended the respondent as an attorney. He gave the respondent's professional card to the client, who had never heard of the attorney. When he spoke with the respondent he told him "I feel all right," but the respondent told him, he testified, to go to see the same physician named in the evidence supporting the charge in count VIII and suggested that the client stay away from work to improve his case.

The client concerned in count X testified that a man came to his house the day after an accident in which the client was involved and recommended the respondent's services. He gave the client the respondent's card and had him sign a retainer agreement. When the client visited the respondent at his office, the agreement he had signed was on the respondent's desk.

Prior to their accidents the clients in counts IV, VII, VIII, IX and X did not know the respondent and had never heard of him.

In his testimony at the disciplinary proceedings the respondent stated he did not remember how the clients concerned in these counts came to him and his files did not indicate the circumstances of his being retained by them.

We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the re-

spondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing. What we said in *In re Krasner,* 32 Ill.2d 121, 127, under resembling circumstances, is applicable here:

> "Anchoring his argument to the frequently expressed principle that charges in a disciplinary proceeding must be sustained by clear and convincing proof, (*e.g. In re Donaghy,* 402 Ill. 120, 124) respondent contends there is no proof that Vogele, Skidmore or any other person actually solicited any cases, or that respondent had any knowledge they were doing so, and as a consequence no evidence that business was ever solicited by respondent or by others in his behalf. His theory seems to be that without direct testimonial evidence of solicitation, either by Vogele or Skidmore or the persons solicited, the proof against him is neither clear nor convincing. We do not agree. Circumstantial evidence is legal evidence and neither the commissioners nor this court are required to be naive or impractical in appraising an attorney's conduct."

As to the charges that Bossov failed to account for and pay over amounts due clients in the settlements, the Committee stated that the charges in counts I, II, III, IV and VII showed a pattern of the respondent's settling claims without proper explanation or accounting to his clients. It was stated, too, there were irregularities in the accountings by the respondent and that in one instance a client was induced to file a false statement to conceal that the client had been shortchanged in a settlement distribution.

In count I there were two clients concerned, Lancaster and Robinson. Two settlements were involved, one for $3,000 and one for $1,000. An insurance company draft

was made payable to Lancaster, Robinson and the respondent for $3,000, and a draft by a different insurance company in the amount of $1,000 was made payable to Lancaster, his wife and the respondent. The fee arrangement between Bossov and the clients was that he would be entitled to one third of any settlement as attorney's fees. Robinson received only $300 from the settlement and Lancaster received payments of $50, $35, $400, $200 and $400 from the respondent as his share of the settlements. The respondent had told Lancaster that the first settlement was for $1,000 when in fact it was for $3,000. The $200 and the second payment of $400 that Lancaster received from the respondent were gotten after Lancaster received a letter from the insurance company stating that the settlement had been for $3,000. Lancaster went with his former employer to the respondent's office and confronted him with the letter. The respondent gave Lancaster $200 in cash and told him not to return. However, the respondent later paid Lancaster an additional $400. Bossov testified that he did not know and did not have any record of what he had paid Lancaster.

The case of the client involved in count II was settled for $350. The respondent sent the client a check for $100, although the client had never authorized the settlement and had never signed a release or authorized its being signed. The respondent had filed his attorney's lien notice for 33⅓ percent with the insurance company, and the client, of course, was entitled to two thirds of the settlement. The respondent's statement in his defense that the client wanted only $100 and that he was agreeable to the attorney's retaining all in excess of that amount is irrelevant and professionally offensive.

The testimony of the client concerned in count III was that he received $300 in cash from the respondent and also small advances not in excess of a total of $20. He never received an accounting from the respondent. The settlement involved was $950. Respondent denied that he had given the client $300 in cash and exhibited his check made payable to the client in the amount of $587. The respondent testified that he cashed the check for the client but he didn't recall how much money was given the client.

In count IV there was a settlement of $2,400 for a woman and a $300 settlement for her minor daughter. The client testified that neither she, her daughter nor her husband had seen the insurance company's settlement draft and that she had not received any accounting from the respondent. She said she had endorsed a check which the respondent had made payable to her order but that she had not seen the face of the check. The check was for $1,700. The respondent gave her nine $100 bills after she had endorsed it. She testified that after an investigation had begun into the settlement of her case two men who identified themselves as representatives of the respondent came to her home in February or March, 1963, and after telling her there had been an error gave her five $100 bills. She wrote out and backdated a statement at the dictation of one of the men. The statement was to the effect that she had received her settlement in full from the respondent and she was told to date the statement "September 14, 1961." The respondent acknowledged that he had paid the client the additional $500, saying that he hadn't paid it earlier because he did not have the cash. He also said the client had not requested the money and he had assumed her case had been closed.

The *amicus curiae* has stated before this court that the client referred to in count VII of the complaint did in fact receive a satisfactory accounting from the respondent.

We judge that the failure of the respondent to account promptly and pay over moneys due clients was sufficiently demonstrated. Such a failure was obviously and grievously improper and of course constitutes serious misconduct. *In re Snitoff*, 53 Ill.2d 50.

We must reject the contention that activities of employees of the American Insurance Association require that the complaint must be dismissed. The respondent's contention was that the investigation and the complaint's preparation were not conducted by the Chicago Bar Association. He said the investigators were not members of the Chicago Bar Association and were at all times subject to the direction of the insurance association. However, John Burns, who testified that he and other investigators of the American Insurance Association had been checking on professional activities of the respondent, said that he had acted as an agent of the Chicago Bar Association and that he and the other investigators had acted at the request of the bar association. They turned over the results of their investigations to that association. In the course of the investigation, and preceding and following it, he had received directions and instructions from representatives of the bar association. He testified that he did not play any part in the drafting or the filing of the complaint against the respondent and said he in no way participated in the prosecution, save as a witness. It appears from the record that the complaint was drawn by members of the Inquiry Committee of the Chicago Bar Association and that the prosecution was conducted only by committee members.

A respondent in *In re Ashbach,* 13 Ill.2d 411, made a similar argument concerning an investigation which he said had been conducted by an insurance association. This court in rejecting the argument said in part: "But regardless of the source of the evidence, it is our duty to decide the case on its merits." 13 Ill.2d 411, 417-8.

The delays of which the respondent complains are to be deplored, but on this record they do not constitute a sufficient ground for the dismissal of the complaint.

John Burns, the insurance association investigator, testified that he and two other investigators concluded their inquiries in this matter in the fall of 1961, but he did not know when the entire investigation was completed. The complaint was filed on January 29, 1965, and was served on the respondent in February 1965. The hearings were not completed until March 4, 1971. The hearing division, or Division Three of the Committee on Grievances, filed its findings on June 14, 1973. The full Committee on Grievances, after amending the findings and recommendation of Division Three, referred the proceeding to the Board of Managers of the Chicago Bar Association. After considering objections of the respondent and amending findings and recommendations the Board filed its report with this court on January 7, 1974.

Many of the delays, especially in the hearing period between January 29, 1965, and March 4, 1971, are explainable by the respondent's action. No less than 37 continuances of the hearings were allowed on the respondent's motion. There were numerous other motions by him. For example, he was granted two extensions of time to file his answer. Also, he filed objections to a motion for issuance of a *subpoena duces tecum,* filed a motion to strike the complaint's [sic] interrogatories and later obtained an extension of time to answer the interrogatories.

No explanation is offered by the *amicus curiae* as to the reasons for the hearing division's not filing its report until June 14, 1973, other than to note that the record contained 2,264 pages.

There is no prejudice to the respondent shown by the record here and there is no charge of specific prejudice made because of delays in the bringing of the proceeding or in the proceeding. As has been stated, the delays in substantial part were caused by the respondent's own action. There is no statute of limitations applicable in a disciplinary proceeding such as this, and we will not refuse to entertain charges simply because of the passage of some period of time. *In re Anderson,* 370 Ill. 515; *People ex rel. Healy* v. *Hooper,* 218 Ill. 313.

Considering all the circumstances, the argument of the respondent that the complaint should be dismissed and he should be discharged because of delays cannot be accepted.

The defendant's conduct as shown by the record here was completely reprehensible. The sanction recommended by the Board of Managers is certainly not excessive, and we adopt it.

Judgment suspending the respondent from the practice of law for three years is entered.

Respondent suspended.

MR. JUSTICE SCHAEFER took no part in the consideration or decision of this case.

MR. JUSTICE KLUCZYNSKI, dissenting:

I cannot agree that the evidence requires the sanction imposed by the majority. The evidence pertaining to the solicitation charges is not clear and convincing.

At the outset it should be noted that not one of respondent's clients expressed dissatisfaction with the services rendered by him, and all apparently admitted going to see him voluntarily. These individuals were ferreted out by a multitude of insurance investigators identifying themselves only as agents of the Chicago Bar Association. The investigation lasted several months.

John Burns, one of the investigators, testified that he worked for the American Insurance Association, which consisted of 200 insurance companies. Exchanges of information were also made with the Allstate and State Farm insurance companies. The investigation was paid for by the insurance association. Each investigator was issued an identification card indicating that the investigation of the closed cases was authorized by the Chicago Bar Association. These credentials were subsequently returned to the supervising agent of the insurance association. As the majority notes, the insurance association report pertaining to respondent was completed in 1961; yet the complaint against him, initially consisting of 16 counts and involving 30 former clients sought out by the insurance investigators, was not filed until 1965. These charges were eventually reduced to seven counts because of evidentiary insufficiency, and the number of clients who testified was similarly lessened.

In regard to the charges of solicitation and procurement, the majority characterizes the incriminating evidence against respondent as mostly circumstantial. Only in two of the five cases in which solicitation was charged was there any attempt to identify the individual as either the respondent (count VII) or respondent's acquaintance (count VIII).

In count VII the client (Frazen) [sic] said she was approached by respondent, yet she gave an inaccurate description of him and admitted her memory was uncertain. In count VIII the client (Nehrke) identified a young college student as the person who recommended respondent, but the party, who was identified, refuted the matter. Nehrke also appears to have identified another person who visited him the evening of the accident, but a stipulation was made that this person was attending an Eastern law school at the time the solicitation purportedly occurred. Nehrke admitted that he knew he would be making a false insurance claim.

The other three charges involve unidentified individuals who approached the clients. Respondent disputed any knowledge of solicitation in these matters. In count X, the client (Frey) said he bribed the investigating police officer in order to avoid being taken to the police station because he did not possess a driver's license at the time of the accident. Frey represented that he signed a retainer agreement given him by the unknown party who came to his house and that he saw this agreement on respondent's desk when he later visited his office. However, Frey said that respondent requested that he sign another retainer agreement.

The evidence related to solicitation lacks the clear and convincing nature necessary to justify the majority's order of suspension. *In re Krasner*, 32 Ill.2d 121, does not persuade. There the evidence showed an identified individual was paid $20,000 for "referring" about 75 personal injury cases to the attorney. The proof in that case of solicitation was far greater than that adduced against respondent.

The charges pertaining to the accounting are also somewhat contradicted. For example, the majority concludes that Lancaster (count I) received only $1,085 in settlement of his claim. *Amicus* suggests that the proper amount would have been $1,491.66. The abstract indicates that Lancaster admitted receiving about $1,500 as a result of the case.

It appears that more accurate accounting methods should have been utilized by respondent, but it should be reiterated that his clients expressed satisfaction with his services. Moreover, even though there may be some confusion as to the actual amounts paid and when payment was made in a limited number of cases, I believe that the confusing circumstances present a mitigating factor in determination of the sanction.

Even if the evidence were to be considered adversely to respondent, prior decisions tend to establish that the majority's sanction is excessive. This court has recognized that a lengthy suspension envisions severe consequences to a lawyer's career. (*In re Donaghy*, 402 Ill. 120, 123-24.) In the previously mentioned case of *In re Krasner* the facts of wrongdoing were far more aggravated than any which might have been demonstrated in the present case. Krasner was suspended for one year. In the case of *In re Damisch*, 38 Ill.2d 195, the misconduct could be described as qualitatively similar to that demonstrated in this case and the respondent was not suspended. Mitigating factors were established in *Damisch* that were akin to those presented on behalf of the 51-year-old respondent in this case. I would therefore favor a reduction of the sanction imposed to one more in keeping with our decisions in *Krasner* and *Damisch*. A reduction would be commensurate with the public's protection and would still maintain the dignity of the legal profession.

Mr. Justice Goldenhersh joins in this dissent.

APPENDIX B

UNITED STATES OF AMERICA

State of Illinois, Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of May in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice
Justice Walter V. Schaefer
Justice Daniel P. Ward
Justice Joseph H. Goldenhersh
Justice Thomas E. Kluczynski
Justice Charles H. Davis
Justice Howard C. Ryan

William J. Scott, Attorney General
William G. Lyons, Marshal
Attest: Clell L. Woods, Clerk

Be It Remembered, that, to-wit: on the 29th day of May, A.D. 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re: No. 46403
Samuel V. Bossov, an Attorney
Information 1356

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

I, Clell L. Woods, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 15th day of August, A.D. 1975.

/s/ Clell L. Woods, Clerk,
Supreme Court of the State of Illinois.

(SEAL)

SUPREME COURT, U. S.

OCT 10 1975

MICHAEL RODAK, JR., CLERK

No. 75-303

In the

Supreme Court of the United States

OCTOBER TERM, 1975

IN THE MATTER OF

SAMUEL V. BOSSOV,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois, under Illinois Revised Statutes c. 110A § 751.

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IN THE

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PROCEEDINGS BELOW

The majority and dissenting opinions of the Illinois Supreme Court are reported in 328 N.E. 2d 309. The two dissenting Judges concluded that Bossov should be suspended but for some lesser period of time. (Petn. App. p. 12)

The Findings, as amended, and the Recommendations, as amended, of the Board of Managers of The Chicago Bar Association, Sitting as Commissioners of the Illinois Supreme Court, are included herein as Appendix A.

QUESTIONS PRESENTED

1. Bossov was not denied due process. The delays of which he complains did not prejudice him and, in many instances, were induced by him. There can be no depriva-

tion of due process without prejudice to the person affected.

2. The Illinois Supreme Court maintained the standard of clear and convincing proof required in cases of this kind and found that that standard had been met. It did not place any burden of proof on Bossov, and did not violate any of his due process rights.

3. The sanction imposed on Bossov is reasonable.

4. Bossov, in his Statement of the Case, refers only to one Federal question as conferring on this Court jurisdiction to entertain his Petition for Certiorari. That is the claim of unreasonable delays. His Statement of the Case does not make reference to any other Federal question.

STATEMENT OF THE CASE

Bossov's statement of the facts of this matter is incomplete and, in some instances, inaccurate. We shall discuss the facts, as briefly as possible, under four sub-heads, viz., Solicitation, Failure to Account and Pay to Clients, Claim by Bossov of Delay, and Investigative Assistance of Employees of the American Insurance Association. However, we first shall consider certain matters that are common to all Counts and issues herein.

The Illinois Supreme Court approved the Report, Findings, as amended, and Recommendation, as amended, of the Board of Managers of The Chicago Bar Association, sitting as Commissioners of the Court. This resulted in the Judgment suspending Bossov from the practice of law for three years.

Finding 11 of the Board of Managers is of particular significance in this Court's consideration of this matter. That Finding is: (App. A, p. 8a)

"11. The Commissioners find that respondent (Bossov) was not candid and open in his testimony during the hearings of this cause."

The Illinois Supreme Court and the Board of Managers just did not believe Bossov.

Further, Bossov threw away records in the face of a pending investigation of his conduct,—a clear indication of the destruction of evidence. He knew that his affairs were being checked. (Dvsn. Rpt. 252)[1] He retained a lawyer,—Jerrold Morris. (Dvsn. Rpt. 270) He examined and "solidified" his files. (Dvsn. Rpt. 269, 270) He took statements from some of his former clients. (Dvsn. Rpt. 252) In 1964, he and his counsel met with Francis Schlax and Kent Yowell, attorneys and members of the Inquiry Committee of The Chicago Bar Association. (Dvsn. Rpt. 270) Yet, thereafter, despite all this, he destroyed some of his records. (Dvsn. Rpt. 252)

We now proceed to a consideration of the facts in the four areas referred to above.

Solicitation. The Illinois Supreme Court concluded: (Petn. App. pp. 3, 4)

> "We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing."

---

[1] In this Brief, "Dvsn. Rpt." refers to the Report of Division III of the Grievance Committee of The Chicago Bar Association, which heard the evidence in this matter. Its Report includes an Abstract of that evidence and the Exhibits.

The Board of Managers, sitting as Commissioners of the Court, found: (App. A, p. 7a)

> "9. The charges of solicitation and procurement in Counts IV, VII, VIII, IX and X and the evidence adduced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute."

And the Board of Managers concluded: (App. A, p. 8a)

> "It is apparent from what has been set forth above that commencing in 1958 and thereafter the respondent, Samuel V. Bossov, solicited or caused to be solicited numerous personal injury claims. The evidence before this Committee demonstrates that divers persons solicited claims for respondent and that respondent could not explain how any of these claimants came to him, but that in each instance claimant was contacted and referred to respondent, he having represented none of said claimants prior to the time of the accident. • • •"

With reference to each of the Counts referred to above, the evidence showed that there had been an accident. Bossov was unable to tell how he got the cases which resulted. (Dvsn. Rpt. 144, 146, 180, 204, 240) The persons involved did not know Bossov and never had heard of him. (Dvsn. Rpt. 95, 151, 182, 209, 242) However, almost immediately someone talked to each person about his retaining Bossov and gave that person Bossov's card. (Dvsn. Rpt. 96, 103, 153, 182, 209, 243) In the *Franzen* case, that "someone" was Bossov himself. (Dvsn. Rpt. 151, 153). In the *Nehrke* case, he was Feldman, Bossov's friend and former law clerk and investigator. (Dvsn. Rpt. 181) The

Illinois Supreme Court and the Board of Managers found that Bossov had solicited personal injury claims. The coincidences and the pattern were too great for them to believe otherwise.

This case also illustrates the ultimate evils of solicitation. It involves fraudulent claims. For example, Bossov told Nehrke to go to Dr. Sternback and tell him he was injured when he was not. (Dvsn. Rpt. 181) He told Duffy, who was "all right," to go to Dr. Sternback and to stay off work because it would make the case look better. (Dvsn. Rpt. 210) It also involves failure to account for and pay over the amounts due clients on settlements. These matters are considered next.

Failure to Account and Pay to Clients. The Illinois Supreme Court concluded: (Petn. App. p. 7)

> "We judge that the failure of the respondent to account promptly and pay over moneys due clients was sufficiently demonstrated. Such a failure was obviously and grievously improper and of course constitutes serious misconduct."

The Board of Managers found: (App. A, p. 7a)

> "10. The charges of failure to properly account with clients on the proceeds of settlement of injury claims in Counts I, II, III, IV and VII show a pattern of how respondent settled personal injury claims on behalf of his clients without proper explanation or accounting of funds. None of the clients in the Counts listed in this paragraph received an accounting or written settlement statement. * * *"

And the Board of Managers concluded: (App. A, p. 8a)

> "* * * The evidence also clearly demonstrated that respondent failed to properly account to clients for settlement funds received in settlement of claims,

with irregularities in accounting and failure to apprise clients as to the amount of the settlements.

* * * * *

"Furthermore, respondent in an attempt to cover up past acts of failure to account, made additional payments to clients many months after the original settlement and in one instance his agents induced a client to sign a false statement with respect to the additional payment, all with a purpose of covering up his having short changed them."

Bossov never gave the clients involved in Counts I, II, III and IV, referred to above, written accountings. (Dvsn. Rpt. 23, 36, 56, 73, 96) He owed Lancaster (Count I) $1,491.66. (Complt's. Ex. 13, 29; Dvsn. Rpt. 17, 22, 48) He paid him $485.00. (Dvsn. Rpt. 35, 39, 42) He owed Oshinski (Count II) $233.33. (Complt's. Ex. 46, 47; Dvsn. Rpt. 53, 54) He paid him $100.00. (Dvsn. Rpt. 55) He owed Aldridge (Count III) $633.33. (Complt's. Ex. 80; Dvsn. Rpt. 72) He paid him $300.00 and made small loans to him of approximately $20.00. (Dvsn. Rpt. 73, 75) He owed St. Charles (Count IV) $1,451.00. (Complt's. Ex. 101, 102, 104, 105; Dvsn. Rpt. 91-94) He paid her $900.00. (Dvsn. Rpt. 96, 101) Later, after the investigation of these matters commenced, Bossov made further payments: $600.00 to Lancaster, (Dvsn. Rpt. 35, 42) additional money, amount not recalled, to Oshinski, (Dvsn. Rpt. 60, 61) $500.00 to St. Charles. (Dvsn. Rpt. 97) These later payments are consistent with only one explanation, that Bossov short changed his clients in the first instance. The conclusion of the Illinois Supreme Court and the Board of Managers is inescapable,—Bossov didn't account and didn't pay.

In fact, this matter has many of the indicia of misconduct present in cases of this type. Bossov kept no books of account. He did not give his clients written accountings.

He frequently dealt with his clients in cash. He often made out checks to his clients in amounts larger than they received. (Lancaster, Complt's. Ex. 36, Dvsn. Rpt. 10, 11, 13; Aldridge, Complt's. Ex. 310, Dvsn. Rpt. 68, 69; St. Charles, Complt's. Ex. 314, Dvsn. Rpt. 87, 96, 101) He talked vaguely about payments "to get a case built up" (Dvsn. Rpt. 42) and payments to an adjuster. (Dvsn. Rpt. 97, 101) These facts, additionally, must have been persuasive to the Illinois Supreme Court and the Board of Managers.

Claim by Bossov of Delay. The Illinois Supreme Court concluded: (Petn.App. p. 9)

> "There is no prejudice to the respondent shown by the record here and there is no charge of specific prejudice made because of delays in the bringing of the proceeding or in the proceeding. As has been stated, the delays in substantial part were caused by the respondent's own action. There is no statute of limitations applicable in a disciplinary proceeding such as this, and we will not refuse to entertain charges simply because of the passage of some period of time. *In re Anderson,* 370 Ill. 515; *People ex rel. Healy* v. *Hooper,* 218 Ill. 313
>
> * * * * *
>
> "Considering all the circumstances, the argument of the respondent that the complaint should be dismissed and he should be discharged because of delays cannot be accepted."

The Board of Managers found: (App. A, p. 8a)

> "12. The Commissioners find that unreasonable delays in this cause occurred between January 29, 1965 and March 4, 1971, and hearings were continued on numerous occasions by reason of the engagement of respondent's counsel in matters of national importance."

After receipt by the Bar Association of the results of the investigation for the Association by investigators of the American Insurance Association, there followed a long period of consideration by the Committee on Inquiry of the Bar. Bossov knew of the investigation. (Dvsn. Rpt. 252) He had no false sense of security. He did what in his opinion best furthered his position. He was not prejudiced by this passage of time.

As we already have stated, during this period, Bossov retained a lawyer,—Jerrold Morris. (Dvsn. Rpt. 270) He and his counsel conferred with Francis Schlax and Kent Yowell, attorneys and members of the Committee on Inquiry. (Dvsn. Rpt. 270) He checked and "solidified" his files. (Dvsn. Rpt. 269, 270) He took statements from some of his clients. (Dvsn. Rpt. 252) He even threw away some of his records. (Dvsn. Rpt. 252, 267)

Further, many delays were induced by Bossov after the Complaint was filed. For example, he sought and was granted two extensions of time to file his answer. (Dvsn. Rpt. 1) He filed objections to a motion for a subpoena duces tecum. (Dvsn. Rpt. 2) He also filed a motion to strike Complainant's interrogatories, (Dvsn. Rpt. 2) later filed objections to the interrogatories (Dvsn. Rpt. 2) and subsequently received further time to answer the same. (Dvsn. Rpt. 3) He further filed a motion to strike Complainant's notice to produce (Dvsn. Rpt. 4) and a memorandum in opposition to Complainant's motion for production of his clients' statements. (Dvsn. Rpt. 4) More significantly, *37 continuances* of the hearings were granted on Respondent's motions. (Dvsn. Rpt. 2-7)

At the conclusion of the hearings, the Commissioners found themselves with a large record of 2264 pages and many exhibits. These were abstracted and carefully con-

sidered before the Report, Findings and Recommendation were issued.

Investigative Assistance of Employees of the American Insurance Association. The Illinois Supreme Court concluded, "We must reject the contention that activities of employees of the American Insurance Association require that the complaint must be dismissed." (Petn. App. p. 7)

Burns, an investigator for the American Insurance Association, testified that for two or three months during the summer of 1961, at the request of The Chicago Bar Association, he and other investigators checked the professional activities of Bossov and other attorneys. (R. 2174, 2175, Dvsn. Rpt. 298) He further said that in this regard he was acting as an agent of the Bar Association. (R. 2175, Dvsn. Rpt. 298) The results of this work were turned over to the Association. (Dvsn. Rpt. 302)

Burns met with representatives of the Bar before, during and after his investigation. (Dvsn. Rpt. 302) He received directions and instructions from them. (Dvsn. Rpt. 302) He never was consulted by the Bar regarding whether a complaint should be filed against Bossov. (Dvsn. Rpt. 303) The trial was conducted solely by members of plaint." (Dvsn. Rpt. 303) He did not participate in any way in the presentation of evidence, except as a witness. (Dvsn. Rpt. 303)

A long period of consideration by the Committee on Inquiry followed the receipt by the Bar of the results of that investigation. During that time Bossov and his counsel met with the attorneys and members of the Inquiry Committee. (Dvsn. Rpt. 270) The complaint that was filed was solely the work of the Committee. (Dvsn. Rpt. 303) The trial was conducted solely by members of

the Committee, principally Paul B. Youle and Richard W. Austin. The record does not support Bossov's charges in his Petition (pp. 3, 4) that the investigation of this matter and the preparation of the complaint were done by the Insurance Association rather than by the Bar. Nor does it support the charge that the investigators were controlled by the Insurance Association. Nothing improper is to be found in the action of the Insurance Association in assisting the Bar.

Bossov's Statement of the Case refers only to one Federal question which he claims gives this Court jurisdiction to entertain his Petition for Certiorari. That is the matter of the alleged unreasonable delays in the disciplinary proceedings as violative of his constitutional right to due process of law. (See Petn. for Cert. 5) Bossov's Statement of the Case does not make reference to any other Federal question.

REASONS FOR REFUSING WRIT

I.

BOSSOV WAS NOT DENIED DUE PROCESS.

Bossov was afforded every right guaranteed to him by the phrase, "due process". He received prompt notice of the proceedings and very well knew of the investigation that resulted in that action. The Complaint advised him of the charges of solicitation and failure to account and pay to clients. He was represented by able counsel, one of whom appears for him in this Court. The Illinois Supreme Court and the Board of Managers of The Chicago Bar Association, as well as its Committees, carefully considered this matter.

A. Bossov May Not Complain About Delays. These Did Not Result In Any Denial Of Due Process. They Were Induced By Him, In Many Instances, And Did Not Prejudice Him, In Any Event.

This is the only Federal question which Bossov contends, in his Statement of the Case, confers jurisdiction on this Court to entertain his Petition for Certiorari.

There is no statute of limitation in Illinois applicable to disciplinary proceedings against an attorney. *The People* v. *Hooper,* (1905) 218 Ill. 313, 332, 75 N.E. 896, 899; *In re Anderson,* (1939) 370 Ill. 515, 520, 521, 19 N.E. 2d 330, 333. This is the situation in most jurisdictions. See Annotation, 45 A.L.R. 1111. Generally, a plea of delay, laches or limitations will not bar action by a sovereign, such as the State of Illinois, through its Supreme Court, in regulating a lawyer's practice or disciplining him for misconduct. Delay, alone, is insufficient.

However, the Illinois Supreme Court has said that in discharging its disciplinary obligations, it will consider whether delay has resulted in any prejudice to the attorney. *The People* v. *Hooper,* (1905) 218 Ill. 313, 332, 75 N.E. 896, 899; *In re Anderson,* (1939) 370 Ill. 515, 520, 521, 19 N.E. 2d 330, 333. This likewise is the situation in most jurisdictions. See, as examples, *Tennessee Bar Association* v. *Berke,* (1960, C.A. Tenn.) 344 S.W. 2d 567, and *Florida Bar Association* v. *Randolph* (1970, Fla.) 238 So. 2d 635, both cited by Bossov.

In *Tennessee* v. *Berke,* 344 S.W. 2d 567, there was a nine year interval between the incident involved and the institution of disciplinary proceedings. During that time certain witnesses had died or become unavailable. The Court approved dismissal of the charges, observing that Berke had been prejudiced by the lapse of time. The Court said, 344 S.W. 2d 571, 572:

> "We think such long delay, unexplained as it is in this record, coupled with proof that witnesses have died or otherwise have become unavailable, constitutes laches (Gibson's Suits in Chancery, 5th Ed. § 81) and was a ground for dismissal of the petition. In 7 C.J.S. Attorney and Client, § 25b, it is stated 'Staleness in a charge against an attorney may prevent its being considered, because an unreasonable delay in the presentation of a charge of misconduct may make it impossible for an attorney to procure the witnesses or the testimony which would have been available at an earlier time to meet such charge.' That is the condition here * * *. Nor, does it appear the delay has been to his benefit but rather, strongly, to his detriment."

In *Florida* v. *Randolph,* 238 So. 2d 635, despite the language quoted by Bossov, the Court publicly reprimanded Randolph, suspended him from the practice of law for ninety days and assessed against him the costs of the proceeding.

Obviously, there can be no deprivation of due process without some prejudice to the person affected.

Bossov claims prejudice because of the interval of three years and five months between the completion of the investigation for the Bar Association by employees of the American Insurance Association and the filing of the Complaint by the Committee on Inquiry of the Association. No such prejudice exists. The Committee thoroughly considered the results of the investigation. Bossov knew that his affairs were being checked. We have detailed previously, and need not repeat here, his activities in attempting to cover up his misconduct.

Bossov also complains about the interval of two years and seven months between the close of the hearings before

Division III of the Grievance Committee of the Association, which heard the evidence, and the issuance of its Findings and Recommendation. Division III found itself with a large record of 2264 pages and many exhibits. These were abstracted and carefully considered. No prejudice to Bossov exists here.

Bossov is silent about his own very substantial contributions to the passage of time. After the filing of the Complaint, all of the delays were attributable to him. We have referred to these earlier, including the 37 continuances of the hearings granted on Bossov's motions. (Dvsn. Rpt. 2-7)

Bossov further complains of the loss of memories of those witnesses who appeared against him. It appears to us that if such loss existed, which we do not admit, it must have helped his case and certainly did not weaken his position. What he hoped to accomplish if the hearings had been held at an earlier time is a matter of pure speculation on his part.

Bossov's contentions do not require us to reach the matter of a speedy trial as guaranteed by the Sixth and Fourteenth Amendments. "* * * the speedy trial provision has no application until the putative defendant in some way becomes an 'accused', an event that occurred in this case when the appellees were indicted." *United States* v. *Marion*, (1971) 404 U.S. 307. We already have demonstrated that after the filing of the Complaint here, all delays were attributable to Bossov.

Likewise, the absence of any prejudice to Bossov and the lack of any deprivation of due process make unnecessary any detailed discussion of the nature of disciplinary matters. The Illinois Supreme Court long has held that such proceedings are for the protection of the courts and

the public and are not criminal prosecutions and subject to all the rules that govern such cases. *People* v. *Meyerovitz,* (1917) 278 Ill. 356, 364, 116 N.E. 189; *In re Damisch,* (1967) 38 Ill. 2d 195, 206, 230 N.E. 2d 254, 260; *In re Schwarz,* (1972) 51 Ill. 2d 334, 338, 282 N.E. 2d 689, 691; certiorari denied, 409 U.S. 1047, rehearing denied, 410 U.S. 917. *Schwarz* involved the grant of an immunity from criminal prosecution to an attorney and the effect of that grant under the Fifth and Fourteenth Amendments. The questions were briefed carefully for this Court in the Petition for Certiorari and the Brief in Opposition thereto. The Petition was denied by this Court.

B. The Illinois Supreme Court Did Not Relax The Customary Standard Of Proof And Did Not Place The Burden Of Proof On Bossov.

Bossov, in his Statement of the Case, failed to mention the matter of the burden of proof as a reason for this Court having jurisdiction of his Petition for Certiorari. Nevertheless, he has devoted Point II of his Brief to that subject.

Bossov contends that the Illinois Supreme Court placed on him the burden of proving the absence of payments to solicitors. This is not so. It is based on a misconception of the Court's opinion as a reading of that opinion shows.

The Court reviewed the evidence of solicitation. We have discussed much of it previously. The Court noted that while the evidence was mostly circumstatntial, this was proper and sufficient proof. It concluded that the evidence satisfied the requirement that it be clear and convincing and sustained the charge of solicitation. The Court said: (Petn. App. 1, 3, 4)

"In a disciplinary proceeding the charges must be proved by clear and convincing evidence.

* * * * *

"We consider the evidence of solicitation satisfied the requirement that it be clear and convincing. The respondent's argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he had paid anyone to do so does not persuade. We consider that the evidence of solicitation, though mostly circumstantial, was convincing. What we said *In re Krasner,* 32 Ill. 2d 121, 127, under resembling circumstances, is applicable here:

> 'Anchoring his argument to the frequently expressed principle that charges in a disciplinary proceeding must be sustained by clear and convincing proof, (*e.g. In re Donaghy,* 402 Ill. 120, 124) respondent contends there is no proof that Vogele, Skidmore or any other person actually solicited any cases, or that respondent had any knowledge they were doing so, and as a consequence no evidence that business was ever solicited by respondent or by others in his behalf. His theory seems to be that without direct testimonial evidence of solicitation, either by Vogele or Skidmore or the persons solicited, the proof against him is neither clear nor convincing. We do not agree. Circumstantial evidence is legal evidence and neither the Commissioners nor this court are required to be naive or impractical in appraising an attorney's conduct.'"

Bossov relies on the Illinois Supreme Court's statement that his "argument that there was no evidence that the respondent had employed anyone to solicit injury claims for him or that he paid anyone to do so does not persuade." This is not a statement that Bossov has the burden of proving the absence of payments to solicitors.

It does not denote a shift in the burden of proof,—only disagreement with an argument and conclusion.

Bossov's authorities on this matter are not in point. They deal with situations where the burden and standard of proof were relaxed. *In re Winship,* (1970) 397 U.S. 358, was a proceeding involving a juvenile who was charged and convicted of stealing money. Pursuant to the applicable New York statute, the Trial Judge adopted the standard of "preponderance of the evidence" as to the proof rather than the standard of "beyond a reasonable doubt." This Court reversed, holding that the Trial Judge's adoption of the wrong standard violated one of the essentials of "due process." In *Mullaney* v. *Wilbur,* (1975) 95 S.Ct. 1881; and *Cool* v. *United States,* (1972) 409 U.S. 100, both criminal prosecutions, this Court regarded a Maine statute in the first case and the Trial Judge's instructions in the second as reducing the prosecution's burden of proof of "beyond a reasonable doubt." Obviously, *In re Ruffalo,* (1968) 390 U.S. 544, considered a different situation and likewise is not in point.

In any event, it is clear that in this matter the Illinois Supreme Court maintained the standard of clear and convincing proof required in cases of this kind and did not place the burden of proof on Bossov. It did not violate any of his "due process rights."

II.

THE SANCTION IMPOSED ON BOSSOV IS REASONABLE.

Bossov, in his Statement of the Case, likewise failed to mention "cruel and unusual punishment" as a reason for this Court's jurisdiction.

The Illinois Supreme Court, in suspending Bossov from the practice of law for three years, said, "The defendant's conduct as shown by the record here was completely reprehensible. The sanction recommended by the Board of Managers is certainly not excessive, and we adopt it." (Petn. App. p. 9) The two dissenting Judges concluded that Bossov should be suspended but for some lesser period of time. (Petn. App. p. 12)

The sanction imposed is not excessive or disproportionate. The Illinois Supreme Court has disbarred for solicitation, *In re McCallum*, (1945) 391 Ill. 400, 64 N.E. 2d 310; as well as for failure to account and pay to clients, *In re Snitoff*, (1972) 53 Ill. 2d 50, 289 N.E. 2d 428; *In re Ashbach*, (1958) 13 Ill. 2d 411, 150 N.E. 2d 19. This Court should not interfere with the sanction for Bossov.

CONCLUSION

This Court should deny Bossov's Petition for Certiorari. "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice." *In re Isserman*, (1953) 345 U.S. 286, 289.

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, sitting as Commissioners of the Supreme Court of Illinois, under Illinois Revised Statutes c. 110A §751.

APPENDIX A

BEFORE THE BOARD OF MANAGERS AND THE COMMITTEE ON GRIEVANCES OF THE CHICAGO BAR ASSOCIATION COMMISSIONERS OF THE SUPREME COURT OF ILLINOIS

In The Matter of)
Samuel V. Bossov,) Commissioners No. 1356
An Attorney.)

FINDINGS AS AMENDED AND RECOMMENDATION AS AMENDED OF THE BOARD OF MANAGERS OF THE CHICAGO BAR ASSOCIATION SITTING AS COMMISSIONERS OF THE ILLINOIS SUPREME COURT

The Commissioners find that Samuel V. Bossov was licensed to practice in the State of Illinois in 1953 and has been a practicing attorney since that date; that in 1958 and subsequent years a considerable portion of his practice has been personal injury work; and that on or about January 29, 1965 a complaint was filed against Samuel V. Bossov, respondent, charging him with engaging in solicitation and procurement of personal injury claims. The complaint also charged respondent, Samuel V. Bossov, with failure to properly account for the proceeds of settlement of personal injury claims. His action was unprofessional and calculated to bring the good name of the legal profession into disrepute and demonstrated a lack of understanding of his duties, responsibilities and obligations as an attorney at law and constituted violations thereof. Some of the particulars of these practices are as follows:

1. The Complaint in Count I arose out of a three car accident which occurred on July 22, 1959, in which True Lancaster and Joe Robinson were involved. Respondent served a notice of attorney's lien for a 33⅓% fee on July 27, 1959. The Count alleges that Respondent solicited

and procured the claims and that upon settlement of the claims he failed to properly account for funds in his possession due and owing True Lancaster and Josephine Lancaster, his wife.

With respect to that part of Count I pertaining to solicitation and procurement of said claim, we find that the charge was not sustained by the evidence. However, the failure to properly account was sustained by the evidence.

This accident involved two settlements, one for $3,000.00 settled when a covenant not to sue in the amount of $3,000.00 was executed on December 15, 1959. On December 17, 1959, Respondent issued his own check for $950.00 payable to True Lancaster, the proceeds of which check Lancaster did not receive. Lancaster endorsed the check which then was, and remained, in Bossov's possession. Joe Robinson at some time was paid $300.00. On December 18, 1959, a check was issued for $3,000.00 by The Home Indemnity Company payable to True Lancaster and Joe Robinson, not endorsed by Lancaster but bearing his purported signature and Bossov's signature, and cashed on the same day. The other claim for $1,000.00 was settled for that sum on or about January 13, 1960. We find that Respondent failed to inform True Lancaster as to the amount of the first settlement and told him it was for $1,000.00, when in fact it was $3,000.00. On learning the settlement was for $3,000.00 instead of $1,000.00, Lancaster was dissatisfied. Thereafter, he and his boss, witness Edward Harney, went to Respondent's office and confronted him with the deficiency. Respondent gave Lancaster an additional $200.00 in cash in an effort to put the matter to rest. From the two settlements of $3,000.00 and $1,000.00, respectively, Lancaster received payments of $50.00, $35.00, $400.00, $400.00 and an additional $200.00, being the same $200.00 just referred to above, for a total of $1,085.00 and Joe Robinson $300.00, although the fee arrangement was one-third of the settlement. Such conduct is contrary to the canons of professional ethics of the

legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

2. The complaint charges in Count II in the case of Joseph Oshinski and Glo Oshinski, improperly pleaded and sometimes referred to as Gloria, that respondent failed to properly account for funds in his possession due and owing the Oshinskis, said funds being the proceeds of settlement of personal injury claims; also, that respondent failed to consult with his clients with reference to the settlement. We find both charges are supported by the evidence. Said claims arose from an automobile accident which occurred in Chicago, Illinois sometime on or about February 27, 1959. Respondent filed his attorney's lien for 33⅓% on March 20, 1959. The case was settled when on or about June 24, 1959, Allstate Insurance Company issued its check for $350 payable to Joseph Oshinski and Gloria Oshinski. Respondent mailed his own check for $100 dated July 6, 1959 to Oshinski. The Allstate Insurance Company check for $350 was cashed July 8, 1959. We find that the settlements were made without authority of the Oshinskis, and that neither Joseph or Glo Oshinski signed the release nor authorized the signing thereof by anyone else, although the signatures were purportedly witnessed by respondent, and that the charges in Count II of the complaint are amply sustained by the evidence. That about two years after the settlement, respondent paid additional money to Oshinski in bills, two days after investigators from the Bar Association had contacted him. The statement by respondent's representative was that "if there was going to be trouble they (respondent) wanted to clear it up or something like that." Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

3. The Complaint charges in Count III that on February 10, 1961, Ted Aldridge was involved in an automobile accident. That on April 20, 1961, Samuel V. Bossov

failed to consult with his client in making a settlement and failed to properly account for funds in his possession due and owing to Ted Aldridge. We find that Respondent failed to properly account for funds due and owing Ted Aldridge and that Respondent failed to consult with Ted Aldridge prior to making the settlement of the personal injury claim. The settlement in this case was $950.00. Ted Aldridge received $300.00 in cash and, in addition, small advances, not exceeding $20.00. No accounting of the settlement was made to Aldridge. Of a $587.00 check written by Respondent on April 21, 1961, payable to Ted Aldridge, said Aldridge did not receive the proceeds. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

4. The complaint in Count IV charges that on and after May 20, 1959 respondent engaged in a comprehensive scheme of solicitation and procurement of personal injury claims, and pursuant thereto the claims of Doris St. Charles and Deborah St. Charles, her minor daughter, were solicited and procured in Chicago, Illinois by respondent. Count IV also charges that respondent failed properly to account for funds in his possession and owing to Doris and Deborah St. Charles. We find that the evidence on this Count amply sustained the allegations as to solicitation and procurement and failure to properly account. The St. Charles had never heard of respondent prior to their being contacted between 5:30 and 6:30 on the afternoon of the automobile accident. The accident occurred on May 20, 1959 between 3:00 and 4:00 in the afternoon. Doris St. Charles was released from the hospital at about 5:00 or 5:30 o'clock in the afternoon and went home. That same evening at about 5:30 to 6:30 P.M. someone telephoned the St. Charles at home and later someone came to their house and indicated he was there for attorney Bossov. The settlements in this case amounted to $2,400 for Doris St. Charles and $300 for her minor daughter, Deborah; that neither Doris St. Charles nor

Douglas St. Charles, her husband, saw the amount of the insurance company settlement draft, nor did respondent advise them as to the amount; that Doris St. Charles received $900 in $100 bills from respondent; that the settlement was consummated on or about November 10, 1959. In February or March of 1963 respondent caused Doris St. Charles to be contacted and paid an additional $500 in $100 bills, and caused her to sign a false statement indicating the payment was made on September 14, 1961, prior to the time it was actually received by Mrs. St. Charles. The charges in Count IV of the complaint are amply substantiated by the evidence. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

5. The Complaint in the case of Richard Franzen, a minor, and his parents, Eric and Evelyn Franzen, Count VII, arose out of an accident where an automobile struck a motor scooter being operated by Richard Franzen on Ashland Avenue in the City of Chicago on July 12, 1959. The Complaint charges solicitation and procurement and settlement without the permission or approval of the clients. We find from the evidence that both charges are amply supported by the evidence. The claim was solicited by Respondent at the Illinois Masonic Hospital where Richard Franzen was taken after the accident. The evidence shows that Respondent approached Mrs. Franzen when she and her son were leaving the hospital and asked if he could represent the Franzens in their damage claim. She had never before heard of Respondent. The night of the accident Respondent and another man went to the home of the Franzens and asked to represent them in their accident claim. With respect to the settlement, Respondent caused Evelyn Franzen to endorse the settlement check of the insurance company without showing her the face amount and induced her to accept a settlement for $150.00, whereas the settlement was $275.00, without explaining the full financial implications and without advising her, orally or in writing, the manner in which

the amount of $150.00 was computed. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

6. The complaint in Count VIII, involving a man by the name of Donald Nehrke, was the result of an automobile accident which occurred on May 6, 1960 on LaSalle and Clark Streets in Chicago, Illinois. The charge against respondent is that he solicited and procured this claim by and through one John Doe, true name unknown. We find that the evidence supports the charge in the complaint. The evidence shows that the accident occurred at between 3:00 and 4:00 o'clock in the afternoon, and after the other motorist got a ticket the police officer suggested that Donald Nehrke could get a newer car if he employed respondent. Representatives from Bossov's office came to Nehrke's home the night of the accident, and Nehrke went to respondent's office the next morning. Nehrke told Bossov he was not injured in the accident, nor was his car damaged, but he did go to a doctor of respondent's choosing. Respondent does not remember how Donald Nehrke came to him, and the evidence clearly shows that he had not known or represented Nehrke prior to this time, nor had Nehrke ever heard of respondent. Nehrke ultimately abandoned his claim, and there was no settlement or payment. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

7. The complaint in Count IX in the case of James Duffy charges respondent with soliciting and procuring a personal injury claim resulting from an automobile accident which occurred on May 5, 1959 on Elston Avenue in Chicago, Illinois. The evidence shows that on the evening of the day of the accident some unknown person contacted James Duffy and asked if he had a lawyer and recommended respondent and gave Duffy respondent's card. Duffy had never before heard of respondent. We find that the charges in the complaint were sustained by

the evidence. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

8. The complaint in the case of Raymond Frey, Count X, arose out of an automobile accident which occurred on May 8, 1959 on Avers Street near Belmont Avenue in the City of Chicago and charged respondent with soliciting and procuring said claim. The evidence shows that a man who said he was a deputy sheriff came to Frey's home on the Sunday after the accident on the preceding Friday, and recommended respondent as an attorney and gave the witness Bossov's card. Frey had never before heard of respondent. Respondent undertook the representation of Raymond Frey and carried the matter through to settlement. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

9. The charges of solicitation and procurement in Counts IV, VII, VIII, IX and X and the evidence adduced in connection therewith show a pattern of comprehensive solicitation and procurement of personal injury claims by and on behalf of respondent. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

10. The charges of failure to properly account with clients on the proceeds of settlement of injury claims in Counts I, II, III, IV and VII show a pattern of how respondent settled personal injury claims on behalf of his clients without proper explanation or accounting of funds. None of the clients in the Counts listed in this paragraph received an accounting or written settlement statement. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

11. The Commissioners find that respondent was not candid and open in his testimony during the hearings of this cause.

12. The Commissioners find that unreasonable delays in this cause occurred between January 29, 1965 and March 4, 1971, and hearings were continued on numerous occasions by reason of the engagement of respondent's counsel in matters of national importance.

CONCLUSION

It is apparent from what has been set forth above that commencing in 1958 and thereafter the respondent, Samuel V. Bossov, solicited or caused to be solicited numerous personal injury claims. The evidence before this Committee demonstrates that divers persons solicited claims for respondent and that respondent could not explain how any of these claimants came to him, but that in each instance claimant was contacted and referred to respondent, he having represented none of said claimants prior to the time of the accident. The evidence also clearly demonstrated that respondent failed to properly account to clients for settlement funds received in settlement of claims, with irregularities in accounting and failure to apprise clients as to the amount of the settlements.

Furthermore, respondent in an attempt to cover up past acts of failure to account, made additional payments to clients many months after the original settlement, and in one instance his agents induced a client to sign a false statement with respect to the additional payment, all with a purpose of covering up his having short changed them.

It is the opinion of the Commissioners that the solicitation and procuring of the aforesaid personal injury claims and the failure to properly account to his clients with respect to settlement, as well as causing clients' names to be signed to releases and settling without prior consent of his clients, are unprofessional in character and demonstrate a lack of understanding on the part of respondent of the duties, responsibilities and obligations

of an attorney at law. Such conduct is contrary to the canons of professional ethics of the legal profession and the public policy of the State of Illinois and tends to bring the legal profession into disrepute.

RECOMMENDATION

The Recommendation of the Full Committee that the Respondent, Samuel V. Bossov, be suspended from the practice of law for the period of five years by the Supreme Court of Illinois be and it hereby is Amended to a Recommendation that the Respondent be suspended from the practice of law by the Supreme Court of Illinois for the period of three years.

The Report, Findings as Amended, and Recommendation as Amended, be filed with the Supreme Court of Illinois on December 21, 1973.

Copies of this Order be sent to all Counsel of Record.
Chicago, Illinois

/s/ James W. Kissel
JAMES W. KISSEL, President
of The Chicago Bar Association
and Commissioner of the Supreme
Court of Illinois

Copies of this Order sent to all Counsel of Record.

/s/ John F. McBride
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

IN THE MATTER OF SAMUEL V. BOSSOV, *Petitioner.*

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petition for Writ of Certiorari specifically contends that Petitioner was denied due process in that delays substantially hindered his defense against charges of professional misconduct. He expressly complains of a three-year and five-month delay between the completion of the investigation and the filing of any complaint specifying the charges against him, and a two-year and seven-month delay between the completion of hearings and the recommendation of

disciplinary action. The Respondent's[1] Brief in Opposition concedes that these delays were solely the result of the inaction of the Grievance Committee of the Chicago Bar Association, but seeks to obfuscate the constitutional implications of the delays by raising a number of non-responsive and novel issues.

Respondent repeatedly asserts that Petitioner is a "bad man," apparently in the belief that, if true, this would excuse denials of due process. Reviewing the evidence on guilt or innocence is, however, neither appropriate in this forum, nor a reasoned response to claims of constitutional violations.

Respondent apparently contends that because Petitioner was found guilty of the charges below, he could not have been prejudiced by the delays. The Respondent states:

> "Bossov further complains of the loss of memories of those witnesses who appeared against him. It appears to us that if such loss existed, which we do not admit, it must have helped his case and certainly did not weaken his position. What he hoped to accomplish if the hearings had been held at an earlier time is a matter of pure speculation on his part." (Brief in Opp. at p. 13).

This is a remarkable response to the argument that the delays prevented Petitioner from challenging evidence suggesting guilt and from presenting evidence to support his innocence. Contrary to Respondent's bald assertion, what Petitioner "hoped to accomplish"

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[1] The Brief in Opposition has technically been filed by the individual who appeared as *Amicus Curiae* in the proceedings below on behalf of the Grievance Committee of the Chicago Bar Association. For convenience, he will be referred to in this Reply as Respondent.

if the complaint had been issued in a timely manner is not a matter of speculation. Petitioner was charged with soliciting through the use of paid agents. However, the delays resulted in the witnesses being unable to identify these so-called agents. As a result, Petitioner could not challenge the role of *unidentified* persons alleged to have acted for pay on his behalf, or offer evidence to establish the negative fact that he had not hired solicitors. Instead, as Respondent concedes, the essential element of payment was decided by the court below on the basis of "circumstantial evidence."[2]

We reiterate also, that the Court below shifted the burden of proof when it held that the *Petitioner* failed to establish that there was no payment for solicitation. As Respondent now puts it, proof rested on the fact that "Bossov was unable to tell how he got the cases . . . ." (Brief in Opp., at p. 4.)

Respondent attempts to minimize the importance of the delays below on the theory that Petitioner was, in a general way, aware of the investigation and thus could adequately prepare a defense in advance of being informed of the charges against him. Under Respondent's view, Petitioner should have interviewed every person with whom he had ever had professional contacts in order to preserve information that might

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[2] Respondent cites two instances in which the so-called solicitors were identified. One involved a former law clerk and long-time friend of Petitioner. That this individual recommended Petitioner as an attorney hardly supports an inference of paid solicitation. In the other, a witness who had recently suffered a stroke identified Petitioner, but gave a completely inaccurate description of him. In any event, Petitioner could hardly constitute his own paid solicitor.

be relevant to whatever charges might at some later time be brought against him. The logical consequences of Respondent's assertion simply highlight the fact that knowledge of an investigation is no substitute for a specification of charges.

Nonetheless, Respondent takes the extraordinary position that the witnesses' losses of memory resulting from the delays in this case "must have helped [Petitioner's] case and certainly did not weaken his position." (Brief in Opp., at p. 5) As a statement of fact, that is simply untrue as shown above. As a statement of a legal presumption, it is absurd. In *Ross* v. *United States,* 349 F.2d 210 (D.C. Cir. 1965), delays in bringing formal charges contributed to losses of memory by the defendant and the sole prosecution witness. The court rejected the Government's theory that the defendant had to show specifically that the memory losses prejudiced his case and the conviction was reversed. Here, the denial of due process is even clearer, since delay-induced memory losses precluded petitioner from learning the identities of essential participants in the incidents in question, *i.e.,* the alleged solicitors. In a closely analogous case, *United States* v. *Curry,* 284 F. Supp. 458 (N.D. Ill. 1968), the court held that delays in bringing narcotics charges violated the defendant's due process rights where they precluded him from locating a Government informer who allegedly participated in the offense. Similarly, the delays in the present case prevented the Petitioner from identifying, locating, and examining the solicitors he had allegedly hired.

In conclusion, the Brief in Opposition has presented arguments which are either non-responsive or erroneous or both.

Respectfully submitted,

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